

Pers 76-8306

15 NOV 76

OGC Has Reviewed

MEMORANDUM FOR: Chief, Audit Staff

FROM : F. W. M. Janney
Director of Personnel

SUBJECT : Report of Audit of Employee Activity
Association through 31 December 1975

As a result of the 1975 audit of the Employee Activity Association (EAA), you recommended that we seek OGC guidance with regard to assigning Agency employees to functions associated with this program. Attached is a copy of their opinion supporting such assignments. Also attached is a copy of a subsequent approval by the Deputy Director of Central Intelligence.

15/
F. W. M. Janney

Atts

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Stanberry

STATINTL

Approved For Release 2002/05/07 : CIA-RDP84-00688R00

OGE Opinion
File

Approved For Release 2002/05/07 : CIA-RDP84-00688R000

14 October 1976

MEMORANDUM FOR: Director of Personnel

STATINTL FROM :
Office of General Counsel

STATINTL ATTENTION :

SUBJECT : Review of Authority for Staffing Employee
Activity Functions

1. Factual Situation: The Chief of the Audit Staff, Office of Inspector General, recommended in his Report of Audit, dated 5 May 1976, that the Director of Personnel solicit the opinion of General Counsel concerning the Agency's legal authority to assign five employees, paid from appropriated funds, to the EAA coordinator function and the physical fitness room. The staff assigned to the EAA coordinator function consists of two administrative and two clerical employees. It is their duty to coordinate the sports, social and other activities of the EAA in order to ensure that all Agency cover and personnel security requirements are met in employee group relationships with non-Agency persons and organizations. The staff assigned to the physical fitness room consists of only one employee whose duty it is to supervise the activities in the room and to maintain the equipment installed in the room. The Director of Personnel has requested an Opinion of General Counsel reviewing and establishing the legal authority for staffing the above-described employee activities.

2. Issue Presented: May the Director of Personnel legally authorize the assignment of Agency personnel paid from appropriated funds to the EAA coordinator function and the physical fitness room?

3. Conclusion: Yes. Appropriated funds may be used to pay Agency personnel assigned to the EAA coordinator function and the physical fitness room, based upon the unique security requirements of the Agency and the direct relationship between physical fitness and the duties assigned to Agency personnel.

4. The Use of Appropriated Funds for Purely Recreational Activities: It is provided in 31 U.S.C.A. section 628 that appropriated funds can be used for no other purpose than that for which they were appropriated.

Except as otherwise provided by law, funds appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.

This statute has been traditionally interpreted to proscribe the use of appropriated funds for recreational activities. The landmark decision in this regard is found at 18 Comp. Gen. 147 (A-96933, 10 August 1938) in a memorandum to the Secretary of War concerning recreational facilities of Midway Island. There it was stated:

While the furnishing of recreational facilities may be highly desirable, particularly in a place such as referred to in your letter, they constitute expenses which are personal to the employees and which are not permitted to be furnished from appropriated funds unless provided in the appropriation either specifically or by necessary implication. Id. at 147.

See also B-49169 (5 May 1945, unpublished) and B-37344 (14 October 1943, unpublished).

It was subsequently held at 27 Comp. Gen. 679 (B-73234, 12 May 1948) that the prohibition applied to personnel as well as facilities. In that case the Comptroller General refused to permit:

...The employment of personnel, to be paid from appropriated funds, to plan and to administer recreational and entertainment programs. Id. at 681.

It is therefore quite clear that appropriated funds cannot be used for purely recreational activities.

5. The Use of Appropriated Funds for Non-Specified but Essential Activities: Although appropriated funds cannot be used for purely recreational activities, the more modern and enlightened view is that physical fitness activities may be supported through the use of appropriated funds where such expenditure is essential to the mission for which the funds were appropriated. This policy was established in 27 Comp. Gen. 679, supra. That decision, although holding that appropriated funds could not be expended for purely recreational activities, went on to state quite significantly as follows:

It may be stated as a general rule that the use of appropriated funds for objects not specifically set forth in the appropriation act but having a direct connection with and essential to the carrying out of the purposes for which the funds were appropriated is authorized. Id. at 681.

This policy blossomed into full flower in 51 Comp. Gen. 797 (B-86148, 6 June 1972), overruling and reversing B-86148, 8 November 1950. This decision has subsequently been cited with approval in the most recent decisions of 55 Comp. Gen. 307; B-185591 (5 May 1976); and B-130082 (20 July 1976). This decision approved the use of appropriated funds for incentive-type MUZAK music. The decision stated:

Also, it was pointed out that a large number of private industries used incentive music thereby indicating that such firms must have found that the music resulted in increased production and reduced costs. Upon re-examination of our earlier decision we now are inclined to agree that the considerations in that case presented a reasonable basis for the administrative view that expenditures for incentive music constituted 'necessary expenses' under the appropriation there involved. Accordingly, since the Commissioner [Bureau of Public Debt] has determined that--based on factors such as the improvement of employee morale, increased employee productivity and resulting savings to the government--the proposed expenditures constitute 'necessary expenses' of the Bureau, we will not now question such a determination. Id. at 798-9.

If music can be adjudged a necessary expense associated with an appropriation, then most certainly can the EAA coordinator function and the physical fitness room be similarly adjudged.

6. The EAA Coordinator Function and the Physical Fitness Room as Essential to the Mission of the CIA: On several occasions it has been administratively determined within the Agency that the EAA coordinator function and the physical fitness room are necessary to the effective functioning of the CIA. In a Memorandum from General Counsel Lawrence R. Houston to the ADDA, Dated 16 November 1951 and entitled, "Use of Appropriated Funds for Recreational Activities," Mr. Houston stated:

...Justification for this Agency to expend funds for this purpose [recreational equipment or supervision] must be based upon unique operations, which could take us out of the purview of the decisions. Security considerations are the most likely

justification. Another factor supporting such an expenditure would be the need for physical fitness in the particular duties for which the personnel were slated.

A Memorandum from the Director of Personnel Emmett D. Echols to the DDS, dated 16 March 1962, similarly found a need for such facilities.

We have found that security considerations are apt to inhibit many of our employees from normal participation in outside community affairs. The Agency should fill this void by making it possible for people to pursue their interests 'within the family' where security restrictions can be relaxed.

Similar administrative determinations have been made by the Director of Personnel (1976) and the Deputy Director for Support (1967).

In light of the need to justify these expenditures, the following considerations appear to be overriding:

a. Security Considerations--

- (1) The protection of cover for Agency personnel.
- (2) The prevention of identification of Agency personnel.
- (3) The protection of Agency personnel.
- (4) The supervision of outside employee contacts.

b. The need for physical fitness in employees' job performance.

c. The improvement of employee morale.

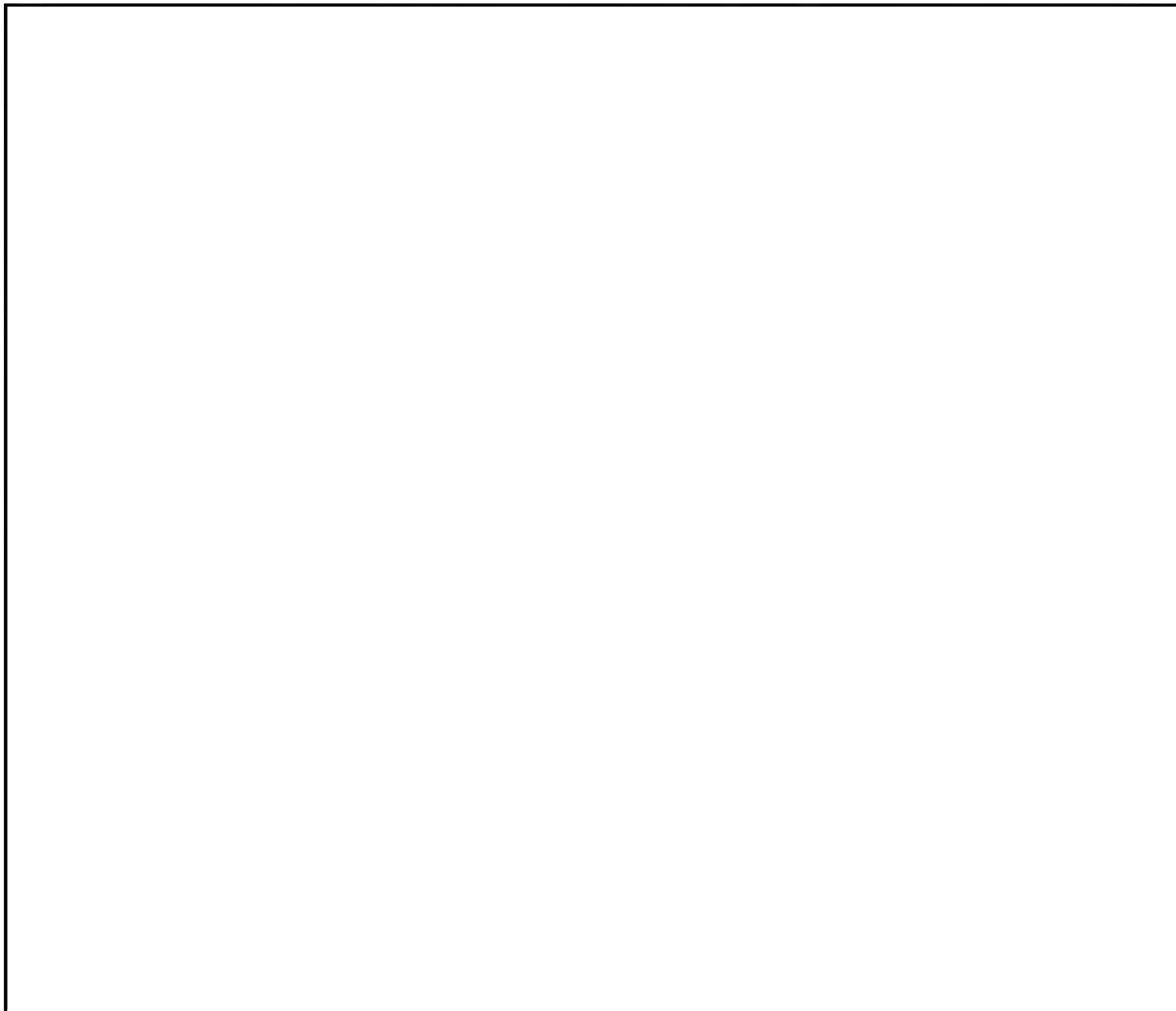
d. Increased employee productivity and resulting savings to the Government.

e. An administrative determination that the expense is necessary for Agency functions by the Director of Personnel (1976), the Director of Personnel (1962), the Deputy Director for Support (1967), and the General Counsel (1951). Although a similar determination by the DCI or the DDCI might be helpful in firmly establishing the propriety of the expenditure, such an additional determination is not required.

f. A finding that physical fitness, increased employee productivity, and the protection of Agency personnel are directly connected with and essential to the purposes for which Agency funds are appropriated.

g. Provisions for employee security and physical fitness are a necessary implication of the CIA appropriation statutes.

h. Provisions for employee security and physical fitness are a FOIAb5 "necessary expense." 51 Comp. Gen. 797.



STATINTL

76-3-12/4

2 NOV 1976

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : Review of Authority for Staffing Employee
Activity Functions

REFERENCE : OGC Memorandum 76-5678, dtd 14 Oct 76,
Same Subject

1. Action Requested: That you approve the continued assignment of employees, paid from appropriated funds, to the Coordinator function of the Employee Activity Association (EAA) and to the physical fitness room.

2. Background: The EAA coordinates various employee club, hobby, self-improvement, and sports activities to ensure that all Agency cover and employee security requirements are met. This is done by two administrative and two clerical employees of the Office of Personnel. The physical fitness room is staffed by one employee of the Office of Personnel who supervises its activities and maintains the exercise equipment. After a review of these activities earlier this year, the Audit Staff, Office of Inspector General, recommended that an opinion be solicited from the General Counsel concerning the legality of assigning to these functions employees who are paid from appropriated funds. The Office of General Counsel has responded (copy attached) that appropriated funds may be used for these purposes based on the unique security requirements of the Agency and the direct relationship between physical fitness and the duties assigned to Agency personnel.

3. Staff Position:

A. The EAA contributes substantially to the morale of Agency employees and offers them, in a secure manner, the programs and activities that are made available to employees of other Federal agencies. The physical fitness room (including the running track) provides exercise facilities for those employees whose duty assignments require the maintenance of

peak physical condition, and at the same time encourages all Agency employees to participate in exercise programs which are beneficial to their health. In the absence of assigned Agency personnel, these programs could no longer be continued.

B. In the legal opinion, the Office of General Counsel noted that administrative determinations have been made on several occasions by Agency officials that the expenses involved in providing these services are necessary for Agency functions and that, although a similar determination by the DCI or DDCI might be helpful in firmly establishing the propriety of the expenditure, such an additional determination is not required. We believe it appropriate to obtain such a determination by the DDCI.

4. Recommendation: That you approve the continued assignment of Agency employees, paid from appropriated funds, to the Coordinator function of EAA, and to the Agency's physical fitness room.

[Redacted Signature]

John F. Blake

STATIN

Att

STATINTL

APPROVED: [Redacted Signature]

Deputy Director of
Central Intelligence

11/10/76
Date

DISAPPROVED: _____

Deputy Director of
Central Intelligence

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MEMORANDUM FOR: Chief, Audit Staff

FROM : F. W. M. Janney
Director of Personnel

VIA : Deputy Director for Administration

SUBJECT : Report of Audit of Employee Activity
Association through 31 December 1975

REFERENCE : Memo to D/Pers from C/Audit Staff dtd
5 May 76, subj: Reports of Audit

1. While the referent Report of Audit contained no recommendations, certain observations were made, on which we comment below.

2. The Report of Audit noted that the EAA Bylaws are not clear as to the extent to which the President may act unilaterally in certain areas of EAA management. The EAA Bylaws provide that the President "shall have and exercise general charge and supervision of the affairs of the corporation." We believe this authority empowers the President to take a variety of actions related to EAA management. Nonetheless, we have confirmed by Board approval certain of the matters noted in the Report of Audit. As indicated in the audit observations, the President has used his authority in the past to:

a. Invest EAA funds - This involves the deposit of EAA funds in the Credit Union and the purchase of certificates of deposit in local savings and loan institutions. This action was brought to the attention of the EAA Board on 20 April 1976.

b. Borrow monies from the Credit Union - The President approved the use of a short-term loan from the Credit Union in order to pay for the block of Redskin tickets that are sold annually. In the past, money had been withdrawn from the EAA account for this expenditure. It was determined in discussions with

- 2 -

the Credit Union that it would save EAA money to handle the transaction with a short-term loan. This procedure was approved at a meeting of the EAA Board on 20 April 1976.

c. Appoint a store manager - It is believed that the President has sufficient authority within the Bylaws to select EAA employees. In the future, however, such appointments will be entered in the minutes of Board meetings.

4. The final EAA audit observation involves the use of appropriated fund employees by EAA. While the report speaks of five employees, there are actually only four EAA contract employees. The fifth individual, [redacted] operates the physical fitness room which is an Agency activity separate and apart from EAA. We agree that our authority to continue this practice should be reconfirmed and will request an OGC opinion.

STATIN

(Signed) F. W. M. Janney

F. W. M. Janney

Attachment:
Reference

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STATINTL OP/BSD/[redacted] gec (4 Jun 76)

MEMORANDUM FOR: Director of Personnel

SUBJECT : Reports of Audit


Audit Reports are attached for the following non-appropriated fund activities:

- (1) Government Employees Health Association, Inc., 31 December 1975.
- (2) Employee Activity Association, 31 December 1975.
- (3) Consolidated Charities, 26 January 1976.
- (4) Public Service Aid Society, 31 December 1975.
- (5) Educational Aid Fund, 31 December 1975.

Please advise the Chief, Audit Staff of action taken on recommendations contained in the reports.

We wish to express our appreciation again for the cooperation extended to the auditors during the audits.

STATINTL


Chief, Audit Staff
Office of Inspector General

Attachments:

5 Audit Reports as stated

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REPORT OF AUDIT
Employee Activity Association

For the Period
1 January 1974 - 31 December 1975

SCOPE OF AUDIT

We examined the balance sheet of the Employees Activity Association (EAA) and related statements of income and expense for the fiscal years ended 31 December 1975 and 1974. We also reviewed EAA operations for compliance with applicable Agency and Federal regulations.

BACKGROUND INFORMATION

The Employee Activity Association, Inc. (EAA) administers a variety of activities for the general benefit and welfare of members. They sponsor social, educational, and athletic clubs; operate a retail store and ticket service; and administer the Agency exercise room and the Central Employees Activity Fund (CEAF). The Agency provides two staff employees, on a reimbursable basis, to the store; four contract employees are assigned to other activities of EAA at no cost.

The EAA Board of Directors has five members. Four are elected representatives of sponsored clubs; the fifth, a member-at-large, is appointed by the Director of Personnel. The Chief, Benefits and Services Division, Office of Personnel, directs the operation of the store with the guidance of his supervisor and the President of the Board. Board actions generally are limited to approval of the annual budget and the store's inventory levels.

SUMMARY OF FINANCIAL OPERATIONS

The net worth of EAA at 31 December 1975 was \$147,020. Net income of \$17,262 in 1975 and \$16,678 in 1974 was derived principally from store operations. Financial statements for Fiscal Years 1975 and 1974 are attached as Exhibits A and B.

AUDIT OBSERVATIONS

The store is managed efficiently and EAA financial controls, procedures and records are effective. Minor matters requiring correct action were resolved during the audit.

During the audit period the President of the Board of Directors invested EAA funds, borrowed monies from the Credit Union for EAA, and appointed a store manager. The by-laws are not clear as to the President's authority to act unilaterally in these matters. We suggest the President obtain clarification of the by-laws from the Office of General Counsel (OGC) or ask the Board of Directors to delegate the necessary authorities.

The Board of Directors is considering the accumulation of cash and investments which now exceed \$150,000 and plans to formalize its position on the disposition of these funds.

The Office of Personnel (OP) details five employees to EAA. The authority for this policy is discussed in a memorandum dated 17 February 1967 from the then Director of Personnel to the then Deputy Director for Support. The memorandum cited three reasons in support of OP's present policy as follows:

a. The Agency, as well as other Government agencies, historically has offered employees certain recreational opportunities of a club, athletic, and cultural nature.

b. Close Agency review and support of such a program stems from the security implications of participation by Agency personnel in these activities in non-Agency groups.

c. An EAA program of this scope and nature has long been considered to be an Agency activity comparable to that afforded by other Federal agencies, and, to this extent, appears appropriate that the Agency support these activities from appropriated funds.

We are concerned whether either (a) or (c) constitutes appropriate legal authority. Each federal agency stands alone in obtaining appropriated funds for authorized purposes.

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to our knowledge there is no general authority for the Agency to support a recreational program in the absence of specific appropriation authority. We suggest OP request Office of General Counsel guidance on this point. One possibility would be to obtain this authority by having the Office of Comptroller specifically request the necessary funds from Congress.

Reason (b) cites, in effect, the Director's special authority to expend funds for confidential purposes. If it is decided to rely on this authority alone, it may be appropriate to present the matter to the DCI for his approval. The memorandum of 17 February 1967 did not request approval of the DCI or the Executive Director/Comptroller for the continuance of assigning staff employees to EAA.

Employees Activities Association
Balance Sheet

31 December 1975

ASSETS

Cash on Hand and in Bank		\$ 65,713
Savings and Investments		84,782
Inventory, at cost		26,235
Prepaid Expenses		627
Equipment, net of Accumulated Depreciation		4,227
Central Employee Activity Fund		
Funds Held in Trust	\$82,742	
Less: Due Fund	<u>82,742</u>	<u>-0-</u>
Total Assets		<u>\$181,584</u>

LIABILITIES AND NET WORTH

Accounts Payable		\$ 25,360
Taxes Payable		2,993
Deposits on Special Orders		133
Accrued Expenses		6,078
Net Worth:		
Balance, 1 January 1974	\$112,704	
Net Income 1974	16,678	
Net Income 1975	17,262	
ADD: Adjustments against prior years earnings	<u>376</u>	
Balance, 31 December 1975		<u>147,020</u>
Total Liabilities and Net Worth		<u>\$181,584</u>

Employee Activity Association
Comparative Statement of Income & Expense
For the Years Ended 31 December 1975 and 1974

	<u>1975</u>	<u>1974</u>
Merchandise Sales	\$347,702	\$307,891
Cost of Goods Sold	298,738	256,973
Gross Profit on Sales	<u>48,964</u>	<u>50,918</u>
Other Income		
Membership Dues		
Interest Income	4,629	3,342
GSI Barbershop	2,832	2,048
Ticket Sales and Club Activities Net	<u>3,917</u>	<u>3,590</u>
Total Other Income	<u>25,461</u>	<u>22,528</u>
Total Income	74,425	73,446
Other Expenses		
General and Administrative	43,519	45,461
Employee Programs	<u>13,644</u>	<u>11,307</u>
Total Other Expenses	<u>57,163</u>	<u>56,768</u>
Net Income	<u>\$ 17,262</u>	<u>\$ 16,678</u>

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